

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

**DARRIN LEN MCGREGOR** :  
**Petitioner** : **CIVIL ACTION NO. 3:14-1035**  
v. : **(JUDGE MANNION)**  
**LATOYA MARIE MURRAY** :  
**Respondent** :

**MEMORANDUM**

Pending before the court is a complaint (Doc. [1](#)) and a motion to proceed *in forma pauperis* (Doc. [2](#)), both filed by the *pro se* plaintiff, Darrin Len McGregor. Also before the court is a report from Judge Susan Schwab, which recommends that the plaintiff's motion for leave to proceed *in forma pauperis* be granted, that his complaint be dismissed for failure to state a claim, and that his request for leave to amend be denied.

By way of relevant background, the plaintiff commenced this action by filing a complaint pursuant to [42 U.S.C. §1983](#) (Doc. [1](#)), as well as a motion for leave to proceed *in forma pauperis* (Doc. [2](#)) on May 27, 2014. According to the complaint, the plaintiff has three children with the defendant, Latoya Marie Murray. (Doc. [1](#)). The plaintiff claims that the defendant is violating his legal and visitation rights by prohibiting their children from having any contact

with him, including by phone, computer, and mail. (Doc. [1](#)). The plaintiff further alleges that when he tries to contact the defendant, she threatens to file criminal charges, files petitions to raise his child support payments, and had an attorney threaten him to sign over his parental rights. (Doc. [1](#)). The plaintiff claims that as a result of the defendant's conduct he suffers from both mental and emotional distress, causing him to abuse alcohol and attempt suicide multiple times. The plaintiff asserts that the defendant has willfully and maliciously violated his parental rights, thereby violating his due process rights under the Fifth and Fourteenth Amendments of the United State Constitution. (Doc. [1](#)). The plaintiff requests that the court grant declaratory and injunctive relief, and modify the custody order.

By report dated November 6, 2014, Judge Schwab first recommends that the plaintiff's application to proceed *in forma pauperis* be granted. (Doc. [5](#)). After reviewing the plaintiff's application (Doc. [2](#)), the court agrees with Judge Schwab's determination. Judge Schwab next recommends that the plaintiff's complaint, filed pursuant to [42 U.S.C. §1983](#), be dismissed as the plaintiff has failed to allege sufficient facts from which it can reasonably be inferred that the defendant was acting under color of state law. (Doc. [5](#)). The court agrees. In order to impose civil liability upon any person under §1983,

the plaintiff must demonstrate that the defendant “exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” [Harvey v. Plains Twp. Police Dept., 635 F.3d 606, 609 \(3d. Cir. 2011\)](#) (quoting [Abbott v. Latshaw, 164 F.3d 141, 146 \(3d. Cir. 1998\)](#)). The plaintiff in this case fails to allege that the defendant in any way acted under color of state law and, as such, his complaint must be dismissed. Finally, the court agrees with Judge Schwab that there is no basis to believe that the plaintiff would be able to cure the defects in his complaint if granted leave to amend. No objections have been filed by either party to Judge Schwab’s report.

When no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” [Fed.R.Civ.P. 72](#) (b), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 \(2010\)](#) (citing [Henderson v. Carlson, 812 F.2d 874, 878 \(3d. Cir. 1987\)](#) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the

magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); [Local Rule 72.31](#).

The court has reviewed each of the recommended bases provided by Judge Schwab for granting the motion for leave to proceed *in forma pauperis*, for dismissing the complaint for failure to state a claim, and for denying the request for leave to amend. Because the court agrees with the sound reasoning that led Judge Schwab to the conclusions in her report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall follow.

*s/ Malachy E. Mannion*  
**MALACHY E. MANNION**  
**United States District Judge**

**Dated: January 9, 2015**

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